

TITLE IV. REVIEW ~~AND ENFORCEMENT~~ OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

FEDERAL RULES OF APPELLATE PROCEDURE

FEDERAL CIRCUIT RULE

Rule 15. Review ~~or Enforcement~~ of an Agency Order — How Obtained; Intervention

(a) Petition for Review; Joint Petition.

- (1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.
- (2) The petition must:
 - (A) name each party seeking review either in the caption or the body of the petition — using such terms as “et al.,” “petitioners,” or “respondents” does not effectively name the parties;
 - (B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and
 - (C) specify the order or part thereof to be reviewed.
- (3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.
- (4) In this rule “agency” includes an agency, board, commission, or officer; “petition for review” includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

- (1) ~~An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.~~
- (2) ~~Within 20 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.~~
- (3) ~~The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.~~

Rule 15. Review of an Agency Order - How Obtained

(a) Petition for Review and Notice of Appeal; Payment of Fees; Address and Telephone Number of Counsel or Pro Se Petitioner or Appellant; Number of Copies.

- (1) **From Patent and Trademark Office.** To appeal a decision of the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Commissioner under 15 U.S.C. § 1071(a), the appellant must file in the Patent and Trademark Office a notice of appeal within the time prescribed by law. The appellant must simultaneously send to the clerk three copies of the notice with the fee set forth in Federal Circuit Rule 52. The Commissioner must promptly advise the clerk that the notice is or is not timely.
- (2) **From Another Agency.**
 - (A) Except as provided in Federal Circuit Rule 15(a)1), to petition or appeal from a decision or order of an agency, the petitioner must file a petition for review or notice of appeal with this court’s clerk within the time prescribed by law. Upon filing, the petitioner must pay the clerk the fees set forth in Federal Circuit Rule 52.
 - (B) A petition filed by the Director of the Office of Personnel Management must be filed as prescribed in Federal Circuit Rule 47.9.

(3) Address and Telephone Number of Counsel or Pro Se Petitioner or Appellant. Each petition for review or notice of appeal must contain the counsel’s — or the pro se petitioner’s or appellant’s — name, current address, and telephone number.

- (4) **Copies.** A petition for review or notice of appeal must be filed in an original (except when the original is filed in the Patent and Trademark Office under 15 U.S.C. § 1071(a)) and three copies.

(b) Docketing Petitions and Appeals; Notice of Docketing.

(1) From the Patent and Trademark Office.

- (A) In an appeal from the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Commissioner under 15 U.S.C. § 1071(a)(2), the clerk will docket the appeal when the Commissioner of Patents and Trademarks sends a copy of the notice of appeal and the certified list as required by Federal Circuit Rule 17(b)(1).

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(c) **Service of the Petition or Application.** The circuit clerk must serve a copy of the petition for review, ~~or an application or cross-application to enforce an agency order~~, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

- (1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;
- (2) file with the clerk a list of those so served; and
- (3) give the clerk enough copies of the petition or application to serve each respondent.

(d) **Intervention.** Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion — or other notice of intervention authorized by statute — must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) **Payment of Fees.** When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

FEDERAL CIRCUIT RULE

(B) If the Commissioner advises the clerk concerning the untimeliness of an appeal, the clerk may order the appellant to show cause why the appeal should not be dismissed and refer appellant's response to the court.

(C) The clerk will notify all parties of the date the appeal is docketed.

(2) **From Another Agency.**

(A) In a petition for review or appeal from an administrative agency other than the Patent and Trademark Office, the clerk will docket a timely appeal or petition upon receipt.

(B) **Notice of docketing.** The clerk must notify all parties of the date the appeal or petition for review is docketed.

(c) **Statement Concerning Discrimination.**

(1) **Petitioner's Statement.** Within 14 days after a petition for review of a decision of the Merit Systems Protection Board or a decision of an arbitrator under 5 U.S.C. § 7121 is docketed, the petitioner must serve on the respondent and file with the clerk:

(A) one of the following statements:

(i) no claim of discrimination by reason of race, sex, age, national origin, or handicapped condition has been or will be made in the case;

(ii) any claim of discrimination by reason of race, sex, age, national origin, or handicapped condition raised before the Board has been abandoned and will not be raised or continued in this or any other court;

(iii) the petition seeks review only of the Board's dismissal of the case for lack of jurisdiction or for untimeliness;

(iv) the case involves an application to the Office of Personnel Management for benefits; or

(v) the case was transferred to the Court of Appeals for the Federal Circuit from a district court and petitioner continues to contest the transfer; and

(B) a statement whether petitioner has filed a discrimination case:

(i) in a United States district court; or

(ii) in the Equal Employment Opportunity Commission.

(2) **Response When a Claim of Discrimination is Raised in a Motion or Brief.** If the petitioner in a case described in Federal Circuit Rule 15(c)(1) files a motion or brief making a claim of discrimination as to the case before the court, the respondent must:

(A) state, in a responsive motion or brief, one of the following:

(i) the respondent concurs in the petitioner's statement concerning discrimination;

(ii) any claim of discrimination the petitioner made to the Merit Systems Protection Board was frivolous, with supporting reasons; or

(iii) the petitioner presented no evidence of discrimination to the Merit Systems Protection Board;

(B) state, if known, whether a discrimination claim has been filed in a United States district court or in the Equal Employment Opportunity Commission; and

(C) include in the response or brief any other information relevant to the statement concerning discrimination.

(d) **Untimely Petition for Review or Notice of Appeal.** The clerk may return a petition for review or notice of appeal that is untimely on its face.

(e) **Notice of Election Under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1).** A party filing a notice of election under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1) with the Commissioner of Patents and Trademarks must file a copy of the notice with the clerk, and the clerk must dismiss the appeal.

(f) **Judicial Review of Department of Veterans Affairs Rules and Regulations.** See Federal Circuit Rule 47.12.

Practice Notes

Time to Appeal or Petition. The table below is provided only as a convenience to counsel, who should refer to the statutes, rules, and case law before determining the period available for taking an appeal or filing a petition for review. Counsel should also note that the event that causes the period to run varies in each case.

Agency	Statute	Time
Arbitrator	5 U.S.C. § 7121, 7703	60 days
Merit Systems Protection Board	5 U.S.C. § 7703	60 days
General Accounting Office	31 U.S.C. § 755	30 days
Personnel Appeals Board		
Board of Patent Appeals and Interferences; Trademark Trial and Appeal Board;	35 U.S.C. § 142	2 months; 14 days for cross-appeal
Commissioner of Patents and Trademarks	15 U.S.C. § 1071	
	37 C.F.R. § 1.304, 2.145	
International Trade Commission	19 U.S.C. § 1337	60 days
Board of Contract Appeals	41 U.S.C. § 607(g)	120 days
Secretary of Commerce	19 U.S.C. § 1202	20 days
Secretary of Agriculture	7 U.S.C. § 2461	60 days
Secretary of Veterans Affairs	38 U.S.C. § 502	60 days
Secretary of Labor; Occupational Safety and Health Review Commission; Federal Labor Relations Authority	28 U.S.C. § 1296	30 days
Office of Compliance, Congressional Accountability Act	2 U.S.C. § 1407(c)(3)	90 days
Equal Employment Opportunity Commission	3 U.S.C. § 454; 28 U.S.C. § 1296(b)	30 days
Office of Personnel Management	5 U.S.C. § 8902(g)(2)	60 days

Filing in the Patent and Trademark Office. A notice of appeal mailed to the Patent and Trademark Office should be addressed:

**Box 8
U.S. Patent and Trademark Office
Washington, DC 20231
Attn: Office of the Solicitor**

The solicitor requests that hand delivery, if any, be made to the Office of the Solicitor, Patent and Trademark Office, Crystal Park II, 2121 Crystal Drive, 9th Floor, Suite 918, Arlington, Virginia, between the hours of 8:30 a.m. and 5:00 p.m.

Copy of Decision or Order. A party filing a petition for review or notice of appeal is urged to attach a copy of the decision or order of the agency for which review is sought.

Practice Notes (continued)

Form Requirements. See Federal Circuit Rule 32(f) for form requirements for petitions and other documents.

Intervention. A party with the right to appeal or to petition for review may not, instead of exercising that right, intervene in another appeal or petition to seek relief in its own cause. Because the United States or an agency of the United States is the only appellee or respondent in cases under this rule, any other party seeking to intervene on the side of the appellee or respondent must move to intervene within 30 days of the date when the petition for review or notice of appeal is filed. A motion for leave to intervene out of time will be granted only in extraordinary circumstances.

Discrimination Statement. A discrimination statement form with a preaddressed, postage-paid return envelope will be provided to any petitioner seeking review of a decision of the Merit Systems Protection Board or arbitrator. Failure to complete the discrimination statement will result in dismissal of the petition for review. See Appendix of Federal Circuit Forms, Form 7.

Timeliness. Except in inter partes appeals from decisions of the Board of Patent Appeals and Interferences or the Trademark Trial and Appeals Board, parties in agency proceedings do not have the 14-day “cross-appeal” period that Federal Rule of Appellate Procedure 4(a)(3) grants to parties appealing from trial courts. The court cannot waive the statutory time requirements for filing a petition for review or notice of appeal.

Consolidation. When more than one party files a petition for review or notice of appeal from the same decision or order, the parties should inform the clerk and the petitions or appeals may be consolidated and an adjusted briefing schedule may be issued.

Arbitration Awards in the United States Postal Service. These arbitration awards may not be appealed to this court.

Proper Governmental Party in Appeals from Boards of Contract Appeals. In appeals from the boards of contract appeals, the proper governmental appellee is the head of the federal agency concerned.

Filing and Docketing a Petition for Review or Appeal. A petition for review or appeal is filed when the petition for review or notice of appeal is received in the court, or in the case of an appeal from the Patent and Trademark Office when the notice of appeal is received by the Commissioner of Patents and Trademarks. A petition for review or appeal filed in this court, or an appeal sent to this court by the Commissioner of Patents and Trademarks, is docketed when it is assigned a docket number, a docket card for the petition for review or appeal is made available to the public, and the names of the parties to the petition for review or appeal are recorded in the party index that is available to the public.

Judicial Review of Department of Veterans Affairs Rules and Regulations. Federal Circuit Rule 47.12 governs actions for judicial review of Department of Veterans Affairs rules and regulations under 38 U.S.C. § 502. The procedures to be followed in such actions are the same as provided in this rule, except as provided in Federal Circuit Rule 47.12.

Change of Head of Agency. In appeals in which the proper governmental party is the head of the agency, counsel for the government should promptly notify the clerk of any change that would affect the accuracy of the caption.

Agency. The term agency in these rules includes a board, commission, or arbitrator.

Rule 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding

~~In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.~~

Rule 16. The Record on Review ~~or Enforcement~~

(a) Composition of the Record. The record on review ~~or enforcement~~ of an agency order consists of:

- (1) the order involved;
- (2) any findings or report on which it is based; and
- (3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) Omissions From or Misstatements in the Record. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

Rule 17. Filing the Record

(a) ~~Agency to File; Time for Filing; Notice of Filing.~~ ~~The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.~~

(b) Filing — What Constitutes.

- (1) The agency must file:
 - (A) ~~the original or a certified copy of the entire record or parts designated by the parties; or~~
 - (B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.
- (2) ~~The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.~~
- (3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on

Rule 17. Filing the Record.

(a) Retaining the Record; Sending the Certified List. The agency must retain the record and send to this court a certified list or index, unless this court, on motion or sua sponte, orders otherwise.

(b) Certified List or Index.

- (1) **From the Patent and Trademark Office.** No later than 40 days after receiving the notice of appeal, the Commissioner must send to the clerk the certified list and a copy of the decision or order appealed. This constitutes compliance with the requirement of 35 U.S.C. § 143 and 15 U.S.C. § 1071(a)(3) for sending a certified record to the court.
- (2) **From Another Agency.** No later than 40 days after the court serves a petition or notice of appeal on an agency, the agency must send to the clerk the certified list or index and a copy of the decision or order being appealed.
- (3) **Index of VA Rulemaking Record.** In petitions for review under 38 U.S.C. § 502, if a petitioner has not adequately identified the rulemaking proceeding complained of, so that the Secretary of Veterans Affairs cannot send the certified list or index within the time provided in Federal Circuit Rule 17(b)(2), the Secretary must promptly move to waive or extend the time for filing the certified list or index.